



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
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DALLAS TX 75202-2733

JUN 1 1 2010

Mr. Richard A Hyde, P.E., Deputy Director
Office of Permitting and Registration
Texas Commission on Environmental Quality (MC 122)
P.O. Box 13087
Austin, TX 78711-3087

Re: Objection to Title V Permit No. O75, NRG Texas Power, Limestone Electric Generating Station Electric Services, Limestone County, Texas

Dear Mr. Hyde:

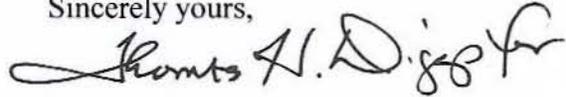
On April 27, 2010, we received the proposed significant revision of the Title V permit for the NRG Texas Power LLC, Limestone Electric Generating Station Electric Services referenced above. As such, EPA's 45-day review period will end on June 12, 2010. This significant revision incorporates Prevention of Significant Deterioration (PSD) Permit No. PSDTX371M4 and a Qualified Facility authorization into the draft Title V permit.

In accordance with 40 CFR § 70.8(c), EPA is objecting to the proposed permitting action. Section 505(b)(1) of the federal Clean Air Act (Act) and 40 CFR § 70.8(c) require EPA to object in writing to the issuance of a proposed Title V permit within 45 days of receipt of the proposed permit (and all necessary supporting information) if EPA determines that the permit is not in compliance with applicable requirements of the Act or requirements under 40 CFR Part 70. Specific reasons for each objection and a description of the terms and conditions that the permit must include to respond to the objections are enclosed.

Section 505(c) of the Act and 40 CFR § 70.8(c)(4) provide that if the permitting authority fails, within 90 days of the date of the objection, to submit a permit revised to meet the objections, then EPA will issue or deny the permit in accordance with the requirements of 40 CFR Part 71. Because the objection issues must be fully addressed within 90 days, we suggest that the revised permit be submitted with sufficient advance notice so that any outstanding issues may be resolved prior to the expiration of the 90-day period. As noted in our letter dated June 10, 2010, we did not approve the Texas Title V program for the use of incorporation by reference of major NSR permits. We also continue to have significant concerns related to the adequacy of permitting associated with TCEQ's use of incorporation by reference for Minor New Source Review permits and Permits By Rule. Should the Title V permit be issued without resolving these concerns and EPA determines these concerns have merit, EPA may reopen the Title V permit for cause, pursuant to 40 CFR § 70.7(f) and (g).

We are committed to working with the TCEQ to ensure that the final Permit is consistent with the all applicable requirements, including the federally-approved Texas SIP and the Texas Title V air permitting program. If you have questions or wish to discuss this further, please contact Jeff Robinson, Chief, Air Permits Section at 214-665-6435, or Stephanie Kordzi, Texas Permit Coordinator at (214) 665-7520. Thank you for your cooperation.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Carl E. Edlund". The signature is fluid and cursive, with a large initial "C" and "E".

Carl E. Edlund, P.E.

Director

Multimedia Planning and Permitting Division

Enclosure

cc: Manager, Environmental Affairs
NRG Texas Power, Limestone Electric Generating Station

Mr. Steve Hagle, Director
Air Permits Division
Texas Commission on Environmental Quality (MC-163)

Enclosure

- 1. Objection to the incorporation by reference of PSD Permit.** The *New Source Review Authorization References* table of the draft Title V permit incorporates PSDTX371M4, issued on July 29, 2003, by reference. EPA has discussed the issue of incorporation by reference in *White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program* (March 5, 1996) (*White Paper 2*). As EPA explained in *White Paper 2*, incorporation by reference may be useful in many instances, though it is important to exercise care to balance the use of incorporation by reference with the obligation to issue permits that are clear and meaningful to all affected parties, including those who must comply with or enforce their conditions. *Id.* at 34-38. See also *In the Matter of Tesoro Refining and Marketing*, Petition No. IX-2004-6 at 8 (March 15, 2005) (*Tesoro Order*). As EPA noted in the *Tesoro Order*, EPA's expectations for what requirements may be referenced and for the necessary level of detail are guided by Sections 504(a) and (c) of the CAA and corresponding provisions at 40 CFR § 70.6(a)(1) and (3). *Id.* Generally, EPA expects that Title V permits will explicitly state all emission limitations and operational requirements for all applicable emission units at a facility. *Id.* We note that TCEQ's use of incorporation by reference for emissions limitations from minor NSR permits and Permits by Rule was approved by EPA. See 66 Fed. Reg. 63318, 63324 (Dec. 6, 2001); see also, *Public Citizen v. EPA*, 343 F.3d 449, at 460-61 (5th Cir. 2003) (upholding EPA's approval of TCEQ's use of incorporation by reference for emissions limitations from minor NSR permits and Permits by Rule). Please note that *In the Matter of Premcor Refining Group, Inc.*, Petition No. VI-2007-02 at 6, fn 3 (May 28, 2009) and *In the Matter of CITGO Refining and Chemicals Co.*, Petition No. VI-2007-01 at 11-12, fn 5 (May 28, 2009) EPA stated that the Agency will be evaluating the use of incorporation by reference for emissions limitations in minor NSR permits and Permits by Rule to determine how well this practice is working. In approving Texas' limited use of incorporation by reference of emissions limitations from minor NSR permits and Permits by Rule, EPA balanced the streamlining benefits of incorporation by reference against the value of a more detailed Title V permit and found Texas' approach for minor NSR permits and Permits by Rule acceptable. See *Public Citizen*, 343 F.3d at 460-61. EPA's decision approving this use of IBR in Texas' program was limited to, and specific to, minor NSR permits and Permits by Rule in Texas. EPA noted the unique challenge Texas faced in integrating requirements from these permits into Title V permits. See 66 Fed. Reg. at 63,326; 60 Fed. Reg. at 30,039; 59 Fed. Reg. 44572, 44574. EPA did not approve (and does not approve of) TCEQ's use of incorporation by reference of emissions limitations for other requirements. See *In the Matter of Premcor Refining Group, Inc.*, Petition No. VI-2007-02 at 5 and *In the Matter of CITGO Refining and Chemicals Co.*, Petition No. VI-2007-01 at 11. Pursuant to 40 CFR § 70.8(c)(1), EPA objects to the issuance of the Title V permit because it incorporates by reference the major New Source Review permit PSDTX371M4 and fails to include emission limitations and standards as necessary to assure compliance with all applicable requirements. See 40 CFR § 70.6(a) (1). In response to this objection, it is essential that TCEQ restate the emission limitations and standards, including those

operational requirements and limitations that assure compliance with all applicable requirements, from PSDTX371M4 in the body of the draft Title V permit.

2. **Objection to the Incorporation of Permit No. 8576 into the Title V permit.** The *New Source Review (NSR) Authorization References* table in the draft Title V permit incorporates by reference Permit No. 8576. Available information indicates that Reliant Energy forwarded a Form PI-E to TCEQ (Notification of Changes to Qualified Facilities) on July 28, 2000. This change affects Permit No. 8576¹, which is a minor NSR Permit, under the Texas Qualified Facilities Program. The permit was issued on September 21, 2001. This program authorizes facilities to become “qualified” to net out of NSR SIP permitting requirements under 30 TAC § 116.118 (pre-change qualification).² EPA disapproved the Texas Qualified Facilities Program on April 14, 2010, pursuant to Section 110 of the federal Clean Air Act (CAA), 42 U.S.C. § 7410.³ 75 FR 19468. Therefore, pursuant to 40 CFR § 70.8(c)(1), EPA must object to the issuance of this Title V permit because physical or operational changes made under the Qualified Facility rule cannot be determined to be in compliance with the applicable requirements of the Texas SIP. The failure to have submitted information necessary to make this determination constitutes an additional basis for this objection, pursuant to 40 CFR § 70.8(c)(3)(ii). In response to this objection, TCEQ must revise the Statement of Basis to include a discussion and analysis explaining how site changes authorized under the Texas Qualified Facilities Program and subsequently reflected in Permit No. 8576 meet the substantive and procedural requirements of the federally-approved Texas SIP.
3. **Objection to Special Condition 13 for Failing to Meet Compliance Certification Requirements.** Special Condition 13 of the draft Title V permit states that the permit holder shall certify compliance with all terms and conditions. The compliance certification requirements for Title V permits are stated in 40 CFR § 70.6(c) (5). Pursuant to 40 CFR § 70.8(c)(1), EPA objects to the issuance of the Title V permit because Special Condition 13 of the draft Title V permit does not meet the regulatory requirements. In response to this objection, TCEQ must amend Special Condition 13 to accurately reflect the compliance certification requirements, as set forth in 40 CFR § 70.6(c)(5), including the identification of the methods or other means for determining the compliance status with *each* term and condition of the permit.
4. **Objection to Special Permit Condition 3.** Under the *Special Terms and Conditions* provisions of the draft Title V permit, Condition 3 requires stationary vents with certain flow rates comply with identified provisions of 30 TAC Chapter 111 of the Texas SIP. However, there is no identification of the specific stationary vents that are subject to those requirements. As such, this condition fails to meet the requirement of 40 CFR § 70.6(a)

¹ See information on this Qualified Facility at <https://webmail.tceq.state.tx.us/gw/webpub>.

² See also 30 TAC §§ 116.10; 116.116(e); and § 116.117.

³ The currently approved SIP regulation is 30 TAC 116.160 adopted by the Texas Natural Resource Conservation Commission (renamed the Texas Commission on Environmental Quality) on October 10, 2001, effective November 1, 2001, which was approved by EPA on July 22, 2004 (69 FR 43752), effective September 20, 2004.

(1), in that the condition lacks the specificity to ensure the compliance with the applicable requirements associated with those unidentified emission units. In addition, the Statement of Basis document for the draft Title V permit does not provide the legal and factual basis for Condition 3, as required by 40 CFR § 70.7(a)(5). Pursuant to 40 CFR § 70.8(c)(1), EPA objects to the issuance of the Title V permit since Condition 3 is not in compliance with the requirements of 40 CFR § 70.6(a)(1) and 70.7(a)(5). In response to this objection, TCEQ must revise Condition 3 of the draft Title V permit to list the specific stationary vents that are subject to the specified requirements of 30 TAC Chapter 111 and provide an explanation in the Statement of Basis for the legal and factual basis for Condition 3.

Additional Concerns:

1. *New Source Review Authorization References* table - Some of the permits that are incorporated by reference may actually be old or outdated underlying permits. EPA recognizes that underlying permits are revised from time to time. Nonetheless, the most recent revision of the underlying permit (and the issuance date) must be stated in the table when incorporated by reference in the Title V permit so the public may properly comment on the Title V permit. TCEQ must confirm that the version of the underlying permit that is incorporated into the Title V permit is readily available in the public records. *See, In the Matter of Premcor Refining Group, Inc.*, Petition No. VI-2007-02 at 5 (May 28, 2009).
2. Permit Condition 9 – In accordance with 40 CFR § 70.6(a) (1) (i), permit conditions must define and provide regulatory citations referencing proper authority allowing TCEQ to grant special exemptions.
3. The incorporated permits 43353, 50527, and 51712 are Pollution Control Project (PCP) permits. TCEQ's creation of a PCP Standard Permit that can be used by sources was not included in our original approval of the TCEQ's standard permit program (See 68 Fed. Reg. 64548, November 14, 2003). Specifically, NRG should provide an analysis of major PSD, Non-applicability New Source Review (NNSR) applicability, or a minor New Source Review (NSR) case-by-case review for the activities covered by the PCP permits.
4. We note that all (18 total) Permits By Rule listed in the "New Source Review Authorization References" table do not appear in the TCEQ web site search engine when pulling up PBRs associated with Limestone's Regulated Entity Number RN100542927. The only active PBR associated with NRG Texas on the database is PBR No. 80272, which is not listed in the table. The TCEQ New Source Review database also lists PBR Nos. 42002, 43797, 46764, 52233, 73908, and 74601 as being active, under a different company name, but associated with the same RN number. These permit numbers are not listed in the permit table. Please ensure that the PBRs that are incorporated by reference in the Title V permit are valid permits. In addition, as noted in our letter dated June 10, 2010, we have significant concerns related to the adequacy of permitting associated with TCEQ's use of incorporation by reference for Minor New Source Review permits and Permits By Rule.

5. PBR 106.144, 106.261, 106.262, 106.106.106.263, 106.452, 106.454, 106.477, and 106.533 require registration. The TCEQ New Source Review database does not show registrations for 106.144, 106.261, 106.262, 106.106.106.263, 106.452, 106.454, 106.477, and 106.533 RN100210517. Please ensure that the permits included in the Title V permit are valid permits.
6. We are aware of PSDTX371M4 being associated with NSR Permits 8576 and 8579. There is no way to discern when looking at one NSR permit that the same PSD permit number is affiliated with another individual NSR permit. This permitting approach is extremely confusing. The permits, which carry the same PSD number, do not regulate the same emission points. Did both permits take into consideration when modifications occur and how does TCEQ determine when PSD is triggered? Are there other NSR permit actions associated with this PSD permit number?
7. EPA did not receive a copy of the draft permit action for PSDTX371M3, which was public noticed on August 14, 2008, and therefore did not make comments on that particular project. However, we identified several issues with the permit action. Specifically, it does not appear that NRG conducted an adequate BACT analysis for carbon monoxide (CO) in Section 1 of the permit application submitted on November 2007. The facility should provide a detailed administrative record documenting appropriate BACT determinations for the emissions of CO. In particular, there was no comparison of the proposed control units with other types of control technology for EGUs in recent PSD permits issued nationwide to lignite fired power plants. The BACT evaluation process involves reviewing not only the EPA's BACT/LAER Clearinghouse, but also Federal/State/Local NSR permits across the country. In addition, the State must prepare a rationale for the BACT determinations, including an analysis of the technical and economic feasibility of available control technologies. At that time, we had identified that LDEQ issued a permit to Cleco Corporation, Dolet Hills Power Station. The permit contained an annual average CO emission rate of 0.15 lb/MMBtu to burn lignite. NRG must provide information regarding why this emission rate was not considered in a BACT analysis to control CO emissions. For reference, the CO emission rate of NRG Limestone Unit 3 is 0.15 lb/MMBtu. Unit 3 will burn a combination of fuels including blend of sub-bituminous and bituminous coal, and pet coke or use of each fuel exclusively. A CO emission rate was discussed in both the Preliminary Determination Summary prepared by the TCEQ and the permit application submitted by the facility. However, the draft permit did not contain the emission rate. The emission rate must be incorporated into the permit to make it practicably enforceable.